

DOCKETED

FILED

OCT 3 1975

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

74C1030

MIDWAY MANUFACTURING COMPANY:

Deposition of

vs.

:

Louis Etlinger

THE MAGNAVOX COMPANY

:

74 Civ 1657 CBM

and

SANDERS ASSOCIATES, INC.

:

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

THE MAGNAVOX COMPANY, et al :

Consolidated Actions

vs.

:

74 C 1030 ✓

74 C 2510 ✓

BALLY MANUFACTURING
CORPORATION, et al

:

75 C 3153

75 C 3933

:

Deposition taken pursuant
to a subpoena and notice at the Sanders Associates, Inc.,
Headquarters; Spit Brook Road, Nashua, New Hampshire;
Tuesday, April 6, 1976; commencing at ten o'clock in the
forenoon.

ERNEST W. NOLIN & ASSOCIATES

General Stenographic Reporters

369 ELGIN AVE., MANCHESTER, N. H. 03104

TELEPHONE: 623-6906

ORIGINAL

PRESENT:

For Midway Manufacturing
Company, Bally Manufacturing
Corporation and Empire:

Fitch, Even, Tabin & Ludeka,
by Donald L. Welsh, Esq., and
John F. Flannery, Esq.,
135 South LaSalle Street,
Chicago, Illinois.

For Atari, Inc.:

Flehr, Hohbach, Test, Albritton &
Herbert, by Thomas O. Herbert,
Esq., 160 Sansome Street,
15th Floor, San Francisco,
California.

For Sanders Associates, Inc.,
and Magnavox Company:

Theodore W. Anderson, Esq.,
and James T. Williams, Esq.,
77 West Washington Street,
Chicago, Illinois.

Stenotype Reporter:

Ronald J. Hayward

MR. WELSH: Before we commence,

I would like to make for the record a stipulation
that we just entered into with Mr. Anderson. The
stipulation is that Midway may serve answers to
interrogatories due in the New York case today,
as agreed by Mr. Anderson, we may provide a signed

copy within a day or two.

MR. ANDERSON: That is acceptable.

LOUIS ETLINGER

called as a witness, being first duly sworn, was examined and testified as follows:

(Interrogatories by Mr. Welsh.)

Q. Would you state your name for the record, please?

A. Louis Etlinger.

Q. Where do you live, Mr. Etlinger?

A. Apache Road, Nashua, New Hampshire.

Q. Are you employed?

A. Yes.

Q. By whom are you employed?

A. Sanders Associates.

Q. In what capacity are you employed by Sanders?

A. I am director of patents and licensing.

Q. What are your duties in that position?

A. I manage and operate the Patent Department.

Q. How many people are in that department?

A. Ten. Approximately ten.

Q. How many attorneys?

- A. Four plus myself.
- Q. To whom do you report?
- A. I report to Mr. Daniel C. Chisholm.
- Q. What is his position?
- A. He is vice-president of corporate planning.
- Q. How long have you held the position of director of patents and licensing?
- A. About three or four years.
- Q. Have your duties been the same during that period as they are now?
- A. Yes.
- Q. And have you reported to Mr. Chisholm during that entire period?
- A. Yes.
- Q. What position did you hold just prior to becoming director of patents and licensing?
- A. Corporate patent counsel.
- Q. How long did you hold that position?
- A. Approximately nine or ten years.
- Q. And that was nine or ten years prior to the time that you became director of patents and licensing?
- A. Yes.
- Q. What were your duties as corporate patent counsel?

A. The same. Did you obtain that degree?

Q. And to whom did you report?

A. Mr. Chisholm for most of that period. Came to

Q. Approximately what portion? Your law degree?

A. I would say all except six or seven months.

Q. You say all except six or seven years?

A. Six or seven months.

Q. And was that during the beginning of your employment

as corporate counsel? Started from law school until

A. Yes. We had a little interim, an organizational

change three or four years ago, but essentially for

for the thirteen or so years I have been here I

have reported to Mr. Chisholm.

Q. What is your formal education? Person, New Jersey;

A. I have a law degree and an engineering degree.

Q. Where did you obtain your law degree?

A. Rutgers University. Electric.

Q. And in what year? Perry Rand from the time you left

A. 1954. Electric until you came to work at Sanders?

Q. And where did you obtain your engineering degree?

A. Rutgers University. Attorney?

Q. Was that a particular type of engineering?

A. Bachelor of Science in Electrical Engineering.

Q. When did you obtain that degree?

A. 1948.

Q. What did you do prior to the time you came to

A. Sanders after you received your law degree?

A. I was a patent attorney for the Sperry Rand Corporation.

Q. During the whole time?

A. The whole time from what?

Q. From the time you graduated from law school until you came to Sanders?

A. No, I had another position in another company before that.

Q. And where was that and when?

A. Well, where it was was in Patterson, New Jersey;

Q. and, when, approximately '52 or '53 to 1955.

Q. What company?

A. It was called Bogue Electric. We file and prosecute

Q. Had you been at Sperry Rand from the time you left Bogue Electric until you came to work at Sanders?

A. Yes.

Q. Are you a licensed attorney?

A. Yes.

Q. Where are you licensed?

A. I am licensed in the state of New York - do you want my bar admissions?

Q. Yes.

A. The Supreme Court, the eastern and southeastern district of New York, ^{SECOND} Federal Circuit; the U. S. Patent Office.

Q. You are not licensed in New Hampshire?

A. No. Sanders Associates in the field of AI patents.

Q. You stated your duties were to manage and operate the Patent Department at Sanders. Could you be a little more specific, please, as to what is

A. involved in that? ^{was shown a demonstration of it.}

A. Well, are you asking me my personal duties or the department's duties? I recall, I may have been

Q. Your department, first.

A. My department does the usual things done in corporate patent departments. We file and prosecute

Q. patent applications, we take care of appeals in

A. the patent office, trade marks, the licensing, ^{we assist in litigation.}

we assist in litigation. We prosecute cases before

Q. the - is it DOD Administrative Board. We file and

A. prosecute foreign patent applications plus all the

Q. administrative housekeeping things, as I say, that

* *omission* 79 MAY 13, 1976

A. are usually done in a corporate patent setup.

Q. Are you responsible for these various functions?

A. Yes., as best as I can remember, there was a

Q. And you have been so responsible since you came to Sanders? and a button you had to push and, if you

A. Yes., if you push it fast enough, the house would flash.

Q. Are you familiar with a development which took place at Sanders Associates in the field of TV games?

A. Yes. screen that had chase games, mazes. There

Q. When did you first become familiar with that development? object was that two people competed,

A. Many years ago I was shown a demonstration of it .

Q. That is how you first became familiar with it?

A. Well, I don't specifically recall, I may have been

Q. told about it first, that you referred to as the

Q. Where was the demonstration held?

A. In a room at Canal Street. provisions for two

Q. Who was present? each individual would operate and

A. Ralph Baer, he may or may not have had a technician there; I don't recall. individual would chase the

Q. Anybody else? ball's spot and when he caught him, one

A. Not that I can recall. there were overlays where

Q. What time of day was the demonstration given? the total

A. I don't recall that either.

Q. Would you describe what was demonstrated to you?

A. Well, as best as I can remember, there was a fire game. It had an overlay of a house on a TV screen and a button you had to push and, if you didn't push it fast enough, the house would flash red; and you would pump some water which was represented by blue. There were also spots on a TV screen that had chase games, mazes. There was an elevator game with a pump with a single spot. The object was that two people competed, one driving the elevator up, the other one down. I do not recall if there was a target-shooting game at that demo or not.

Q. Would you describe what you referred to as the chase games more specifically?

A. Well, I guess there were provisions for two participants and each individual would operate and control a spot on the screen. And one would chase the other spot. One individual would chase the other individual's spot and when he caught him, one disappeared. I think there were overlays where precise constraints were placed of which paths to take.

Q. What did the maze game consist of?

A. I don't recall the details of that one, but there were numerical mazes where you could move according to certain formulas of numbers that were on the overlay. I am not sure, but I think there were some mazes involved in the chase game, as I stated before.

Q. Those were the constraints or path that you referred to?

A. I believe so.

Q. Can you be more specific as to when you saw the demonstration?

A. I can't fix a date for you, but before the filing of the application.

Q. You say before the filing of the application or applications?

A. Well, we eventually incorporated the inventions in an application.

Q. Now, you were present when Mr. Baer, at least a

part of the time when Mr. Baer testified and when

Mr. Rusch and Mr. Harrison testified; did any

of their testimony help refresh your recollection

regarding what occurred at the demonstration or when

it occurred?

A. Well, I was in and out, as you recall, and I don't have any specific recollection of being there in this particular phase of it.

Q. Was any written record made of the demonstration?

A. I don't recall.

Q. I refer you now to what has been marked previously as Exhibit 16 and ask if that exhibit is familiar to you?

A. I have seen this at the depositions.

Q. Do you recall having seen it prior to the depositions?

A. Yes.

Q. When did you see it prior to the depositions?

A. When we gathered up the information as requested in the subpoenas and interrogatories.

Q. When was that?

A. I don't remember specifically, but it was in response to some of the formal requests.

Q. After the lawsuits were filed?

A. I don't remember whether it was before or after.

Q. Did you have anything to do with gathering the

information requested in the subpoenas?

MR. ANDERSON: I object, in the subpoenas?

MR. WELSH: He said that he saw it when they gathered information requested in the subpoenas and interrogatories.

MR. ANDERSON: Well, collectively, I guess, and then he said in a formal request, that was the second part; but I don't think that he said he did anything specifically in response to a subpoena.

THE WITNESS: What is the question, Mr. Welsh?

MR. WELSH: Would you read the question?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: I issued instructions to people on my staff to gather documentation that was either requested in one form or another; I don't remember which.

Q. When you referred to the subpoenas, what subpoenas

did you mean?

A. I didn't have any specific subpoena in mind or any request on interrogatories in mind. All I remember is we had a requirement to gather the information together and I issued instructions that all the information was to be gathered.

Q. To whom did you issue such instructions?

A. Mr. Seligman.

Q. Anybody else?

A. Yes, to Mr. Baer, too.

Q. When you issued your instructions to your staff to gather the documentation requested, by whom was the request made?

A. I don't remember if we had any specific request from anyone. It was just something we had to do.

Q. Was it in connection with the lawsuits?

A. It was in connection with the lawsuits.

Q. Then it must have been after the lawsuits were filed?

A. I really don't remember, Mr. Welsh, whether it was before or after; but at one point in time the information had to be gathered.

Q. You stated you saw the notebook, Sanders Exhibit 16,

when the information was gathered; did you examine the notebook at that time?

A. Not in detail, no.

Q. Did your department have anything to do with the procurement of this notebook?

MR. ANDERSON: I object; I don't know what you mean by procurement. You mean in response to this instruction that he gave or something earlier to that?

MR. WELSH: No, the actual procurement of the notebook for use by Mr. Harrison whose notebook that it has been identified to be.

MR. ANDERSON: Procurement in the sense of a supply purchased from some source of supply?

MR. WELSH: Yes.

THE WITNESS: No.

Q. Do you know how Mr. Harrison obtained the notebook?

A. It was issued to him by my department, by one of the members of my department.

Q. Who was that member?

A. I don't remember the individual's name, but I have always had somebody in my department who is

responsible for the issuance of engineering notebooks either directly or through designated individuals in the divisions.

MR. WELSH: Could I have that answer back, please?

(Whereupon, the previous answer was read back

by the reporter.)

Q. Was there anything unusual about the issuance of this notebook?

A. This particular book?

Q. Yes.

MR. ANDERSON: That is Exhibit 16 that you have been referring to?

MR. WELSH: Right.

THE WITNESS: In one sense yes and in one sense no, Mr. Welsh.

Q. What is the sense yes?

A. This was not what I ordered or supplied to our technical people. What had happened, one of our division managers, the head of the ECM division ordered a special notebook for his group which have

these blue covers without my knowledge. We had called them in and we issued them because they were expensive and we wanted to utilize them.

So in one sense it is not unusual for us to issue them, but it wasn't our normal book we liked to issue at the time.

Q. How many of these notebooks like this did your department issue?

A. I don't have any idea. I can't answer the question specifically now.

Q. Do you have any rough idea?

A. Well, there were hundreds of them.

Q. Hundreds? Yes, I issued them.

A. Yes, as best as I can recollect.

Q. How frequently has your department issued notebooks?

A. I don't understand the question, Mr. Welsh.

Q. Well, how many notebooks does your department issue every week or every month?

A. It varies with the number of new people employed who require notebooks, the extent of the usage when they complete them.

Q. Approximately how many? Do you have any idea of how many are issued on an average every month?

A. I really don't.

Q. Do you have any idea how long it took to issue the hundreds of notebooks of the type of Exhibit 16?

A. I have no idea. I still have some.

Q. Did you start issuing them - I mean, did you issue them exclusively after you started to issue them?

A. No.

Q. What determined when you issued them and when you issued another type?

A. Well, we kept them in the ECM group to start with. Some of the people preferred them and since I had them and didn't want to waste them, if they requested them, I issued them.

Q. On the inside cover of Exhibit 16 there appears to be some crossing out with the word "error." above it, do you know whether anything was crossed out on that notebook?

A. Specific knowledge, no. Just what I can see.

Q. Do you have any knowledge?

A. No.

Q. Do you know who made the entries in red there?

A. No.

Q. Do you know the circumstances under which they

were made?

A. Not specifically, but as sometimes happened, we issued a notebook and somebody didn't keep it and they turned it in and rather than have it go to waste, they would reissue it.

Q. Were you given any information with respect to this particular entry in red on this book?

A. No, not specifically.

Q. Were you given any information by anybody about that?

A. Not that I can recall.

(Whereupon, a recess
did you also enter a date after your name.
was taken.)

Q. I refer you now to page 63 of Sanders' Exhibit 16 and ask, if that refreshes your recollection as to when the first demonstration was given to you of the TV game?

A. Would you read the last part of that question?

(Whereupon, the previous
question was read back

by the reporter.)

I believe that you made the statement

THE WITNESS: No.

Q. Does your signature appear on that page?

A. Yes.

Q. Did you write anything other than your signature on that page?

A. Yes.

Q. What did you write?

A. Well, the note appearing on page 63.

Q. Would you read that note for the record, please?

A. On June 14, 1967, observed and participated in complete set of games described "Summary of Major Games" dated 6-6-67 by R. Baer.

Q. Did you also enter a date after your name?

A. Yes, I did. I believe that.

Q. What was that date? Entry

A. June 14, '67. by what these things

Q. When did you enter that date?

A. I presume on the date indicated, I have no knowledge of it other than that.

Q. Do you believe that you entered it on that date?

A. Yes.

Q. Do you believe that you made the other entry that

you read for the record on that date?

A. Yes.

Q. Do you believe that you saw the demonstration on that date?

A. Yes.

Q. There are attached to page 63 two pages of handwritten notes, are there not?

A. Correct.

Q. Are those the notes that were referred to in your entry on page 63?

A. I assume they are, Mr. Welsh.

Q. Do you believe they are?

A. Well, I can only go by the record here.

Q. Well, do you believe those are the notes that you referred to in your entry on page 63?

A. I can only go by what these things say. They are referred to and I witnessed them on the date and they are incorporated by reference. I have to go by this record.

Q. Do you have any doubt that those are the notes?

A. No.

Q. In the chase game that you described where one spot disappeared upon the other spot - I don't

remember how you put it - catching it, was there also a change of background color of the TV screen at the same time that the spot disappeared?

A. I don't remember. There was in the target-shooting game at one time or another.

Q. You say at one time, do you mean at one time during the whole period of the development of the TV games?

MR. ANDERSON: Your answer is yes? I think you nodded and that won't be recorded, Mr. Etlinger.

Q. Did you nod affirmatively, Mr. Etlinger?

A. I want it said for the record that my nods and gestures are not to be interpreted as any answers. I will voice any answers that I have. Now, what is the question again?

MR. WELSH: Would you read the question?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: Yes.

Q. Your answer is yes?

A. Yes.

Q. There appears to be another signature beneath yours on page 63 of Exhibit 16, whose signature is that?

A. It appears to be Mr. Campman's; H. W. Campman, Jr.

Q. Do you recognize the signature as his?

A. Yes. C. 300 is right.

Q. Who was or who is Mr. Campman?

A. Mr. Campman is the director of research and development for the corporation.

Q. Did he have that position at the date on page 63,
June 14, 1967?

A. To the best of my recollection, either he had that position or he was the assistant.

Q. Was he present at the demonstration?

MR. ANDERSON: I object, what demonstration are you referring to?

MR. WELSH: The demonstration referred to on page 63.

MR. ANDERSON: All right;
not necessarily the one that he mentioned during
earlier testimony?

MR. WELSH: Right.

THE WITNESS: To the best of

my recollection, he was present.

Q. Is the demonstration referred to on page 63 the one that you referred to in your earlier testimony?

MR. ANDERSON: As the first demonstration?

MR. WELSH: Well, I think he only described one earlier, yes.

THE WITNESS: Mr. Welsh, I have seen many demonstrations of these games; I can't say if this was the first or fifth or third or fourth.

Q. So the demonstration that you referred to earlier may have occurred at a time different than this June 14, 1967, date?

A. It may have.

Q. Did you have anything to do with TV games after the first demonstration that you saw?

A. I don't understand the question, Mr. Welsh.

Q. Well, I asked if you were familiar with the TV game project and you stated that you first became aware of it when there was a demonstration?

A. Or a discussion by Ralph Baer.

Q. And did you have anything to do with the project

after that time when you first became aware of it?

MR. ANDERSON: Well, I object, he has already testified that he saw many demonstrations.

THE WITNESS: Mr. Welsh, I really don't understand your question, what did I have to do with the project, in what way; I just don't understand your question?

Q. Well, were you exposed to it any more after that first demonstration other than perhaps seeing some other demonstrations?

A. Yes.

Q. What did you have to do with the program?

A. Well, I monitored the program; I saw that patent applications were prepared and I also engaged in the licensing activity.

Q. What did your monitoring the program consist of?

A. Well, I was - well, it was to watch the progress, new developments, I saw that the patent applications were prepared.

Q. Were you given any assignment in that connection other than your general duties as head of the Patent Department?

A. No.

Q. Did you monitor the TV game project in conjunction with your duties as head of the Patent Department?

A. Yes.

Q. Did your monitoring consist of any regular activity such as periodic checks?

A. I saw Ralph Baer quite frequently and discussed progress and various developments as they came up. We were in the same building at that time.

Q. What building was that?

A. That was the building on Canal Street.

Q. What did you have to do with respect to seeing that patent applications were prepared?

A. Well, I assigned the job to my staff to get them filed.

Q. Who was that?

A. Seligman.

Q. Did you have anything to do with the decision to file patent applications?

A. Yes.

Q. What did you have to do in that regard?

A. I made the decision to file them.

Q. Was it your decision to file all of the patent

applications for the patent involved in this litigation?

A. Yes.

Q. Did you have anything else to do with the preparation and filing of the applications other than making the decision that they would be filed and appointing Mr. Seligman to get them filed?

A. I reviewed them and I signed them as principal attorney.

Q. Did you have anything to do with determining who should be named inventor in each of the applications?

A. I believe so.

Q. What did you have to do in that regard?

A. I believe we had full discussions at that time as to who the inventors were in each application as required by law and the practice of the Patent Office, and we made our decision as to inventorship based on the facts at that time.

Q. When you say at that time, what time are you referring to?

A. The application was the preparation, or before. Sometime between the time of the preparation and filing, we had to make out the formal papers.

Q. By at that time, do you mean at the time when each application was filed you determined who should be named as the inventor?

MR. ANDERSON: I object, he has already answered that question.

MR. WELSH: Well, I don't believe it is clear what application is being referred to.

THE WITNESS: I am talking about all of them, Mr. Welsh. We make a practice of filing applications with the proper inventor.

Q. In the case of each application, was there ever any review made after the application was filed to determine whether the correct inventor was named in each application?

A. I don't remember; but if there had been, we would have gone through the necessary formalities.

Q. You mean if you had made a review and found that there was an incorrect naming of inventors, you would have attempted to make the corrections to name the proper inventors?

A. Yes.

Q. But you don't remember whether there was a review?

A. Not specifically, no.

Q. With regard to licensing activity of the TV game, what did you first have to do in that regard?

MR. ANDERSON: Would you reread the question for me, please?

(Whereupon, the previous

question was read back
as a problem with the question; I can't
by the reporter.)

Understand it.

THE WITNESS: I have a problem understanding the question, Mr. Welsh.

Q. Well, what was the first licensing activity that you engaged in with respect to the TV games?

A. I think we got in touch with some outside people that we thought might have an interest in doing something with it commercially.

Q. At what stage of development was the TV game project at the time when you first got in touch with outside people?

A. I had seen several demonstrations, we had some sort of engineering models working that showed the concept worked.

Q. Did they show that the concept worked satisfactorily?

MR. ANDERSON: I object to the question as vague and indefinite. Satisfactory to whom, by what standards? It is strictly a subjective term.

THE WITNESS: I still have a problem with that question, Mr. Welsh..

Q. I beg your pardon?

A. I have a problem with the question; I don't understand it.

Q. Did you think that they showed the concept worked satisfactorily enough to try to interest other people in the game?

MR. ANDERSON: At the time?

MR. WELSH: At the time that (unclear), the previous they contacted the people.

MR. ANDERSON: That they first (unclear) did that?

MR. WELSH: Yes.

THE WITNESS: I believe so, yes.

Q. Prior to getting in touch with outside people, did you deliberate with respect to what type of arrangement might be made with them?

A. I don't fully understand that question.

Q. Did you just contact the people and say we have got a TV game project here and would like to show it to you? I mean, what was said to the people when they were contacted?

A. Very little, just a very broad thing and we would talk to no one until we had executed appropriate proprietary agreements.

Q. Well, did you have any arrangement at all with respect to working with such people regarding the TV games at the time you first contacted them?

MR. ANDERSON: Would you reread the question, please?

(Whereupon, the previous question was read back in the consumer business at that time, and I guess by the reporter.)
strictly declined, is not in it now. As considered,

, the possibility
MR. ANDERSON: Well, I object to the term arrangement. Arrangement with somebody?

MR. WELSH: With the people they contacted.

Q. Did you have in mind at that time any proposal that you were going to make to them?

A. Not specifically.

Q. Did you generally?

A. In the early stages, we just had to wait and see what interest there was.

Q. Did you ever even consider possibilities such as licensing and manufacturing and selling the game devices prior to the time that you contacted the outside people?

MR. ANDERSON: I object because the term "you" is ambiguous. Do you mean Louis Etlinger or Sanders Associates?

MR. WELSH: The person that Sanders Associates involved in contacting outside people.

THE WITNESS: Sanders was not in the consumer business at that time, and I guess strictly defined, is not in it now. We considered, I think, the possibility of licensing. We thought it was a new and novel and excellent concept which had great possibilities and we were interested in achieving a success with it. And licensing was certainly one of the approaches that we were considering.

Q. What was your purpose in getting in touch with outside people with respect to the TV games?

MR. ANDERSON: I object to the question because it includes the term "you" and that is an undefined term.

MR. WELSH: Meaning you personally or anybody else who was involved in such getting in touch with outside people.

THE WITNESS: Our purpose was as stated in my previous answer.

Q. Well, would you state it again, I am not sure of it?

A. My purpose was to maximize the return and the potential of this invention for the company.

Q. You stated that licensing was one of the approaches you were considering, what other approaches were you considering when you first got in touch with outside people?

A. I think I would have to say that licensing was a major approach of any significance. I don't think any of the other approaches were that serious.

Q. But there were others?

A. Well, we tried to think of different ways of

maximizing our return. The company has had a licensing policy.

Q. Well, what were the other approaches than licensing that were considered?

A. Well, we had given some minor thought to doing it ourself, but it was decided that licensing was the best approach for our particular situation.

Q. When you say doing it ourself, did you mean manufacturing and selling games?

A. Yes.

Q. When you said the company had had a licensing policy - - -

A. Yes, we had licensed patents before.

Q. What type of licensing program were you contemplating as your major approach?

11. MR. ANDERSON: Well, I object to the question, it is vague and ambiguous. The term major is ambiguous, the term you is ambiguous, and the question is not fixed in time.

THE WITNESS: Would you read it back; I get confused easily?

(Whereupon, the previous

question was read back

by the reporter.)

MR. ANDERSON: I object again
on the ground that it is not based in time.

THE WITNESS: Mr. Welsh, I
really have trouble understanding that question,
too.

Q. Because you don't know what time I am thinking about
or the question it relates to?

A. Because it is so vague and general, I have
difficulty answering it.

Q. Did you contemplate granting licenses to
manufacture and sell devices coming under any
patent protection that you might get on the TV
games?

A. That who might sell, the manufacturer?

Q. No, whoever you were contemplating. What kind of
license did you have in mind? You said at the
time that you started contacting outside people
for different kinds of licenses.

MR. ANDERSON: And that is
the time frame you are talking about?

MR. WELSH: Surely.

MR. ANDERSON: Before he approached the first potential licensee or potential company that might be interested?

MR. WELSH: Yes.

THE WITNESS: One possibility was to license somebody to manufacture and sell the item, the standard type of license.

Q. What other possibilities did you consider?

A. Of licensing?

Q. Yes, you just said that one possibility was to license someone to manufacture and to sell, a standard approach; what other types or what other possibilities did you have in mind at that time?

A. I think the possibilities depended on what kind of arrangement we could make with an interested party. It takes two parties to make an arrangement.

Q. Had you made any decision as to any specific approach that you wanted to take when you first contacted the outside people or was your mind open so that what you decided would depend on the type of arrangement that you would make?

MR. ANDERSON: I object again because of the term "you," you mean Louis Etlinger?

MR. WELSH: Acting on behalf of Sanders Associates.

THE WITNESS: Well, Mr. Welsh, we certainly were interested in licensing. It would have been desirable, but until we had some negotiations, we could not specifically know what form the arrangement would be.

Q. So you had an open mind at that time as to any specific arrangement, is that correct?

A. Yes, but I think the licensing was the ultimate goal.

Q. Was any decision made in that regard or were the people acting on behalf of Sanders remaining flexible?

A. The decision was made that we would not do it ourselves for reasons that I stated before, that we were not in the consumer business.

Q. But, other than doing it yourself, were you not of an open mind as to what arrangement might be made with an outside party?

A. I think we were seeking licensees, Mr. Welsh. Certainly open as to the terms of any license.

Q. Was there any decision to seek only licensees?

A. I find that a difficult question to answer. The decision was to seek licensees to, as I said many times before, to bring the greatest return to Sanders. And we felt that the licensing route was the best way.

Q. Was there specific decisions made in that regard or did you continue to contact outside people with an open mind as to other possibilities?

A. I think I have answered that question before; I think we were working in the framework of a license situation which would depend on the parties and the terms of any such agreement. As to what you mean by an open mind, I don't know.

Q. Well, did you contemplate that even though Sanders was not in the consumer field, that Sanders might still manufacture the games and then make some arrangement with an outside party to market the games?

A. We didn't take that very seriously, Mr. Welsh, because Sanders was not a high-volume, low-cost production house. We were in the sophisticated electronics, high-quality mil. spec. type equipment, which by its nature is not consumer-oriented or

priced in the consumer market for the consumer.

We didn't have that kind of production know-how or facilities.

Q. Did you consider making the games for any market other than the consumer market?

MR. ANDERSON: I object to the question as ambiguous. It seems to apply contrary to the testimony with respect to the consumer market. The witness may answer, if he understands it.

THE WITNESS: The concept could lend itself as a training aid for educational purposes. However, we gave this aspect no real consideration as far as we doing it ourselves.

Q. At that time when you were first considering contacting outside people, was Sanders Associates not involved in contracts for the government, military contracts?

A. Yes. We might manufacture a game on...

Q. Did you consider using this TV game project or concept in any way as training devices for the military?

A. We may have, but that was not looked on as a major

market or its best place to get the maximum return.

Q. What do you mean by may have considered it?

A. Well, the invention concept lends itself to many things. It can be used in many ways. One of the things we thought as a possibility was educational use. And I mentioned perhaps as a training aid.

Q. When you said may have, did you mean you don't have any recollection of having considered that specifically?

A. We considered a lot of things, what the invention could be used for. This was only natural.

Q. Did you have meetings in that regard?

A. I think most of these things took place in my discussions with Ralph.

MR. HERBERT: Ralph Baer?

THE WITNESS: Yes.

Q. You stated that Sanders was not a high-volume, low-cost production house; did you contemplate that Sanders might manufacture TV games on some limited basis, at least until someone became interested in some other arrangement?

A. I don't remember that, Mr. Welsh. I have no recollection of that.

MR. ANDERSON: You are still referring to the time prior to first contacting anybody?

MR. WELSH: All of these questions are related to that.

Q. Did you contemplate it after you made your first contact with outside persons?

A. Doing production?

Q. Doing any manufacturing of the games?

A. I didn't contemplate it. If you use the word "you" in the question, that is my answer.

Q. Did you or anyone else acting on behalf of Sanders in connection with the TV game project contemplate that Sanders would manufacture TV games?

MR. ANDERSON: I object to the question in the use of the term acted on behalf of Sanders; I don't think there is any foundation for this witness's knowledge of who was acting on behalf of Sanders or what that involved or at what time or with respect to what contact and I think the question is vague and ambiguous.

THE WITNESS: Do you want me

to answer that?

MR. ANDERSON: Read the question back.

(Whereupon, the previous question was read back by the reporter.)

MR. ANDERSON: I also object to this witness testifying about someone else's contemplation. It would be hearsay, opinion and speculation.

THE WITNESS: I have trouble with talking about manufacturing, what quantity. Did you mean large volume?

Q. Any volume.

A. If you are talking any volume, the answer would be yes. or then ourselves. I may correct that,

Q. Could you describe what manufacturing was contemplated?

MR. ANDERSON: That can be answered yes or no.

MR. WELSH: Yes, it could.

THE WITNESS: I have a great deal of trouble in answering the question of

contemplation. I will have to go back to my earlier answers, Mr. Welsh, we had decided that we were not a low-cost production house, we had no arrangement with anyone to make any. We had decided that we would be better off licensing this product; therefore, I am having difficulties answering these last few questions.

Q. When was that decision made?

A. I think it was made fairly early.

Q. Was it prior to contacting outside people?

A. If we were to go into the manufacture ourselves and enter the market, we certainly would not contact outside people looking to sell licenses or any outside arrangement. I think that is a fair inference. We don't broadcast our new ideas even under proprietary arrangements if we are going to do them ourselves. I may correct that, if we do them ourselves, we don't broadcast them and discuss proprietary ideas, even under agreements.

MR. WELSH: I see we have reached the noon hour, let's break for lunch.

(Whereupon, the luncheon

recess was taken.)

Q. (By Mr. Welsh) What outside people were first contacted on behalf of Sanders in connection with the TV games?

A. I don't remember them all, but I think the first category was in the CATV field. One of them was TelePrompter.

Q. Who at Sanders was involved in dealing with TelePrompter?

A. Well, Ralph Baer and I.

Q. Anybody else?

A. Not that I recall.

Q. Did one of you make contact with TelePrompter?

A. Yes. Not the other.

Q. Who was that?

A. I believe it was Ralph Baer.

Q. Who did he contact at TelePrompter?

A. I don't know who his first contact was with, I don't recall.

Q. What is the first thing you do recall about TelePrompter?

A. Well, I know we had a contact with Mr. Schlafly, who was a vice-president.

Q. What did that contact consist of?

A. I didn't make the contact, Mr. Welsh, so I can't really speak on that.

Q. Well, did you have anything directly to do with TelePrompter?

A. Well, I met Mr. Schlafly. I believe I met him when he was here; I don't remember specifically. I did talk to him one time when he was here about signing a proprietary agreement before we could discuss anything.

Q. Did he sign such an agreement?

A. I believe so, other than in connection with the

Q. I show you what has been marked as Exhibit 22-4B, is that the agreement that you just referred to?

A. Well, it is a proprietary agreement, did he sign it?

Q. Here you pointed to MR. ANDERSON? Mr. Welsh, Exhibit 22-4B appears to be a Xerox copy.

A. I could have seen, I MR. WELSH: Yes.

Q. THE WITNESS: Does that answer your question?

Q. I believe I asked if that were the agreement that you were discussing that you talked to Mr. Schlafly about and I ask if that is the agreement or as

Mr. Anderson pointed out, a copy of it?

A. I think my answer was it is an agreement with Schlafly, I assume this is the agreement.

Q. Did he sign the original of the agreement in your presence?

A. I don't remember, but it looks like it was prepared by us, by me.

Q. Where did you talk to Mr. Schlafly about signing a proprietary agreement?

A. Well, it was at Canal Street, as far as I recall.

Q. Did you have any conversation with Mr. Schlafly at Canal Street other than in connection with the proprietary agreement?

A. I don't really remember, Mr. Welsh. I may have, I don't recall.

Q. Were you present at any demonstration given for Mr. Schlafly?

A. I could have been, I have no specific recollection.

Q. Did you have anything else to do with Sanders' dealings with TelePrompter regarding the TV games?

A. Yes.

Q. What else?

A. I had some further discussions on a whole spectrum

of things.

5 Q. Did Mr. Schlafly make more than one visit to Canal Street?

A. He may have. There was another visit - well, he may have, yes.

Q. Did you state that you do not recall having any discussions with Mr. Schlafly other than with respect to the proprietary agreement?

A. What time are we talking about?

Q. At the time of his visit when he signed the proprietary agreement.

A. I don't recall. ... at Canal Street.

Q. You stated you had further discussions on a whole spectrum, with whom did you have the further discussions?

A. Well, I had a discussion with Mr. Baer and Mr. Kahn and perhaps with Mr. Schlafly. Mr. Kahn was president of TelePrompter.

Q. Mr. Kahn was the president of TelePrompter?

A. Yes.

Q. How many discussions were there?

A. With who?

Q. That you were referring to.

A. Well, we had several. We had at least one or two here and I took one trip to New York that I recall and perhaps two.

Q. And when did the first further discussion take place?

A. The date?

Q. Or the approximate time. Was it after the meeting with Mr. Schlafly, I presume it was, you said it was a further discussion?

A. I assume it was afterwards.

Q. And where did that take place?

A. I know one took place at Canal Street.

Q. Who participated in that?

A. I think Ralph Baer, Mr. Kahn and I am not sure, as I said before, if Mr. Schlafly was there.

Q. Was that the next meeting with anyone from TelePrompter after this visit of Mr. Schlafly where the agreement bearing the date January 18, 1968, was signed?

A. Yes.

Q. Was there a demonstration at that next meeting?

A. I believe so.

Q. Were you present during the demonstration?

A. I believe so.

Q. Do you recall what was demonstrated?

A. I don't recall specifically what was demonstrated, but I know we demonstrated the TV games and I also think we had some sort of an intrusion device. An intrusion alarm device.

Q. Was there a discussion at that meeting regarding some arrangement between Sanders and TelePrompter?

A. Yes. I think it was around that time.

Q. What was that discussion?

A. I can't remember all the specific details, but we had talked - we explored the possibility of some mutual arrangement with TelePrompter in supplying them with the various items for the CATV field. At one time, I don't know when it occurred, we also discussed the question of these intrusion alarm devices. Was the manufacturer one?

Q. You said you explored the possibility of a mutual arrangement on supplying them with various items for the CATV field; when you say in supplying them, did you mean that Sanders would supply the items?

A. At that time we didn't specifically know what TelePrompter was making or what was specifically

being used in the CATV field and the discussions we had with Kahn and Schlafly, more particularly later with Schlafly, had to do with what they were using, what kind of equipment they required, something that perhaps we could possibly manufacture for them.

Q. And did that include the TV games?

A. We had some discussions of some arrangement on TV games. I think it was rather indefinite.

Q. But did you include TV games among the items that you discussed manufacturing for them?

A. Yes.

Q. And that was the discussion of Sanders manufacturing TV games for TelePrompter, is that correct?

A. We were discussing setting up a joint enterprise which would be a manufacturing arm.

Q. Sanders would be the manufacturing arm?

A. No, the joint enterprise would, so I would, as I recall, say that the joint enterprise would be the one that was contemplated with making TV games.

Q. Was that later or was that at the time of your

first - - -

A. That was fairly early, about the second meeting, I guess.

Q. The first meeting with Mr. Kahn or a later meeting with him?

A. I don't recall, I think the first one probably was with Schlafly.

Q. Was that during his first visit?

MR. ANDERSON: I object, you mean was the first meeting with Schlafly during his first visit?

THE WITNESS: I have got to answer yes to that, if that is the question.

Q. Well, I think the question was whether there was discussion with Mr. Schlafly at his first meeting regarding the possible arrangements with TelePrompter.

A. They were at a very exploratory stage.

Q. Was the joint venture concept always present or did it appear later in the discussions with TelePrompter?

A. I think the first discussions were rather indefinite, Mr. Welsh, and I think later we prepared some sort of a proposal we sent them in a letter

which I am sure you have.

Q. In the first discussions before that proposal, did you include Sanders supplying TelePrompter with various items in the CATV field?

A. Sanders as distinguished from the joint venture?

Q. Yes.

A. I think the nature of the talks were preliminary. At that stage, we didn't have any idea what was needed, what kind of specifications or what characteristics these items would have.

Q. But did you discuss Sanders supplying the items, whatever they might become?

A. I can't recall that and I would think that these items would have to have been contemplated to have been supplied as part of a joint venture, but at that point, Mr. Welsh, we didn't know what kind of items they were.

Q. Well, you had designed or Sanders had designed some TV game hardware, had they not?

A. Yes.

Q. And that was demonstrated to the TelePrompter people?

A. Right.

Q. Was the possibility of Sanders supplying that to TelePrompter for use in the CATV field an item of the discussion with TelePrompter?

MR. ANDERSON: I object to the question as vague and ambiguous. When you say supplying, do you mean supplying the design or do you mean something else, Mr. Welsh?

MR. WELSH: I don't know, if the witness understands the question.

MR. ANDERSON: Well, I don't and I object to the question.

THE WITNESS: I don't.

Q. You stated that you discussed the possibility of the mutual arrangement with TelePrompter in supplying them with various items in the CATV field and my question is, Did those items include TV games which you had already designed?

A. As I stated before, Mr. Welsh, everything was in a preliminary stage. We were talking about having a joint venture to supply items for the TV field. I had already mentioned in this morning's testimony that we didn't consider that we had the type of production capability or facilities that could make

low-cost, high-volume production. So any discussions along these lines were on an extremely tentative basis. I think we also discussed licensing. You will probably find that in some of the documents that you have, that proposal.

Q. What did you contemplate was to have been the contribution of Sanders Associates to the joint venture?

MR. ANDERSON: I object to the question; first of all because I don't know who you is; I don't know what contemplation means in this context. The testimony is already that the whole thing was extremely nebulous and vague and formative in nature. You may answer, if you understand the question and feel you can.

THE WITNESS: I have problems with the question. Do you want to read it back, please?

THE WITNESS: I've looked at the kind of question

(Whereupon, the previous

question was read back

by the reporter.)

MR. ANDERSON: I object to the

use of the indefinite article "the joint venture," I don't think a single joint venture has been described or there has been any testimony about a single joint venture.

MR. WELSH: He was referring to a joint venture and it is that joint venture which is referred to in the question.

THE WITNESS: The question of the joint venture and what Sanders' contribution was was going to be discussed. To answer your question more specifically, we had engineering ability and some of the other factors which I think were discussed in a proposal that we made to them in writing.

Q. You stated you had further discussions on a whole spectrum, what was that spectrum?

A. I don't remember all the details; I remember we went to New York, Ralph Baer and I went down to New York. We looked at the kind of components such as couplers and the various hardware that they were using in the CATV field. We discussed intrusion devices. I think there was one discussion at one time of some sort of station equipment.

Just feeling each other out mutually to see if there was any basis for an arrangement between the two companies.

Q. Did you have any further meetings?

A. I have mentioned three, Mr. Welsh.

Q. The first one was with Mr. Schlafly?

A. There was one or two possibly in Nashua. One that I know of and possibly two in New York.

Q. Did that same type of discussion occur at all of the meetings?

MR. ANDERSON: Well, I object, what same type of discussion?

two parties?

MR. WELSH: The whole spectrum.

THE WITNESS: Well, I can't recall the details, but I can remember at one meeting in New York, Mr. Welsh, we went down and all we did was look at components and their specifications. Another discussion was the intrusion device. They had a problem in providing security for a building complex, we discussed that with them.

Q. Was this something that had been designed by Sanders?

A. Yes.

Q. The intrusion device?

A. Yes.

Q. Was that a production item?

MR. ANDERSON: Objection,
a production item at the time that they went down?

MR. WELSH: At the time they
were having their discussions.

MR. ANDERSON: You mean in
production?

MR. WELSH: Yes.

MR. ANDERSON: By one of the
two parties?

MR. WELSH: Well, he said it
was something made by Sanders.

MR. ANDERSON: No, I don't
think he said that.

THE WITNESS: No.

Q. You did not?

A. We had one unit when we went down to New York.

Q. That was designed by Sanders?

A. Yes.

Q. Did Sanders ever make more than one?

A. I believe we recieved an order from TelePrompter sometime in the future for something like twenty or twenty-five.

Q. Was that order filled?

A. I have no direct knowledge, nor did I have direct dealings with the order. I really don't know; I would assume so.

Q. I hand you now what has been marked as Sanders' Exhibit 22-16 which appears to be a copy of a letter from you to Mr. Kahn, president of TelePrompter Corporation, dated April 9, 1968; did you write such a letter and send it to Mr. Kahn?

A. Yes. The fact that it is not signed indirect

Q. Had there as of that time been any definite proposal made by either TelePrompter or Sanders as to what relationship the parties might have?

A. We made a proposal to TelePrompter at one time or another; I don't know whether it proceeded this or followed this. I would gather from looking at this letter that it probably followed this.

Q. Was there just one such proposal?

A. I don't remember that. I know there was one.

Q. Now, I will hand you what was marked as Exhibit 22-53

which appears to be a copy of a letter from you to Mr. Kahn dated March 15, 1968, did you prepare and send such a letter to Mr. Kahn?

A. I can't tell from the copy. It is unsigned.

Q. Did you have a practice with respect to signing letters which would have indicated to you whether or not you sent the letters?

A. If I signed the original, we had carbons or in addition we had secretary's notes that a letter was mailed on the carbon. I don't know whether that letter was sent or was a rough draft. I have no way of knowing by looking at it.

Q. Does the fact that it is not signed indicate whether or not it was sent?

A. I can't speculate.

Q. In other words, some letters of yours around that same period of time might have been sent, but copies have not been signed?

MR. ANDERSON: I object to the question only in the introductory phrase; in other words, I don't think that is a paraphrase of his answer; or if it is supposed to be, I think it is fairly inaccurate. You may phrase a new

question, if you like. Will you do that, please?

MR. WELSH: Read the question back, please?

(Whereupon, the previous question was read back by the reporter.)

Q. Around that period of time, were any letters written by you sent without the copies showing that they were signed?

A. I have no basis for saying that; I don't know.

Q. I hand you now what has been marked Exhibit 22-17 which appears to be a copy of a letter from you to Mr. Kahn, president of TelePrompter, dated April 12, 1968, was that letter prepared by you and sent to Mr. Kahn?

A. I certainly signed this letter or this appears to be a carbon of a letter I must have signed. It looks like my signature to answer the first part of your question. The second part, there is nothing on the letter that says it was mailed.

Q. Do you believe it was mailed?

A. It may have been, I have no specific recollection

of mailing it.

Q. Do you have any records which would indicate whether that was mailed or not?

A. Back in '68, I am not sure.

Q. Do you have files in your department which would show that?

A. I may have; I don't know.

Q. Could you check your files and tell us?

A. I certainly would be willing to check the files. I must remind you that this goes back eight years, we frequently update our files.

Q. It would be a relatively easy thing to check, would it not?

A. Well, let me say this, I will check.

Q. Do you have a chronological file?

A. We usually do, yes.

Q. Would you produce your chronological file for this period?

MR. ANDERSON: I think the file that would contain that letter has been produced heretofore and is probably a file that you have seen and may have been copied.

MR. WELSH: We haven't seen

a chronological file. The files were broken down. This particular Exhibit 22 was identified by Mr. Baer as containing information that he accumulated relating to the TV game development.

MR. ANDERSON: Well, my point is there is probably another copy of this letter in this room that has been shown to you.

MR. FLANNERY: Counselor, are you refusing to produce the chronological file?

MR. ANDERSON: I am saying a copy of this letter which you are interrogating the witness about is probably in this room and you have probably seen it and you may have copied it.

MR. FLANNERY: Do you know?

MR. ANDERSON: It is my understanding that it is.

MR. FLANNERY: Can't we have his chronological file, that will determine it? Have you produced his chronological file?

MR. ANDERSON: I don't know anything about that.

MR. FLANNERY: That is what

we are asking for, the chronological file.

MR. ANDERSON: Well, I will have to have the question read, I wasn't listening to what the question was about the chronological file. We certainly won't give you access to his chronological files.

MR. FLANNERY: Why not?

MR. ANDERSON: It covers all subjects.

MR. FLANNERY: Have him bring in the chronological file.

MR. ANDERSON: There is no reason for it.

MR. FLANNERY: We requested all files directed to the subject matter.

MR. ANDERSON: Negative and you are not entitled to a file just because it might have one paper in it related to the thing.

MR. FLANNERY: We can go in on a motion and I am sure the Court will grant us that chronological file.

MR. ANDERSON: I doubt that.

MR. FLANNERY: It is quite

common on critical witnesses. When he refuses to testify on whether he sent the letter, it is critical.

MR. ANDERSON: Why don't you look for it?

MR. FLANNERY: Maybe you can find it if you know where it is.

MR. ANDERSON: Mr. Welsh has had many days of looking at those documents.

MR. FLANNERY: In fact, Counselor, haven't you searched his chronological files for relevant documents?

MR. ANDERSON: I have not personally searched any files, but a full search was made.

MR. FLANNERY: Has anyone searched his chronological files?

MR. ANDERSON: I think you will have to ask someone other than me. You had Mr. Seligman on the stand relating to that.

MR. FLANNERY: Will you check to see whether his chronological files were searched for relevant documents?

MR. ANDERSON: I will take it under advisement.

(Whereupon, a recess was taken.)

MR. ANDERSON: During the break, we tried to check and we find that the file that might provide any further information is not here, it is in archives. We will try to get it brought back here and check it to see if there is a copy of the letter of April 12, 1968, in the file that would indicate whether or not it was mailed; and, if such a copy exists, we will produce it for your inspection. I don't know if it can be done today, but it will be done by tomorrow.

MR. FLANNERY: Will you stipulate that it was actually sent if it shows on its face that it was sent or if you find it in his chronological files, will you stipulate that it was sent?

MR. ANDERSON: I don't know enough about Sanders' practices, but I think

depending on what Mr. Etlinger might tell you about the practices, we will certainly enter into any reasonable stipulation.

267 Q. Do you have a practice with respect to your chronological files as to what is placed in them?

A. My secretary takes care of them and I believe she puts copies of letters that get sent out.

268 Q. And only copies that are sent out?

A. And that I am not sure of, Mr. Welsh; I will have to check and see on that. I can look at the latest one and see.

269 Q. Well, you stated, I believe, that Exhibit 22-16 had been mailed, but you were unable to state that Exhibit 22-17 had been mailed. What is there different about the two letters that enables you to state that 22-16 was mailed and you are unable to state that with reference to Exhibit 22-17?

A. Well, maybe, Mr. Welsh, I may have spoken in haste. There is nothing to indicate that it was mailed.

I made an assumption that was mailed which we will verify the same as we will with the April 12 letter.

270 Q. Do you assume that Exhibit 22-17, the April 12 letter, was mailed?

MR. ANDERSON: Well, Mr. Welsh,

I would suggest if you can wait on this identifying of whether things were mailed, we might expedite that. I am not sure that we can get it today, but we certainly can by tomorrow morning and this might expedite the whole matter.

Q. Very well. Did you say that you had prepared this letter, the original of Exhibit 22-17?

A. I said it looked like I had signed it.

Q. Did you prepare it?

A. I don't have a direct recollection of preparing it.

Q. Do you have any belief as to whether you prepared it?

A. Well, I find that question a little difficult. I prepare thousands of letters a year, Mr. Welsh. It looks like I prepared it. Eight years later, I don't have an immediate direct recollection that I prepared this specific letter. It has my name on it.

Q. Do you sign letters that you don't prepare?

A. Many.

Q. Do they contain any indication as to who prepared

them if it were someone other than you?

A. Some do and some don't.

Q. Did you read the letter before you signed it?

MR. ANDERSON: Objection,
you mean 22-17?

MR. WELSH: Yes.

THE WITNESS: I generally
read the letters I sign, yes.

Q. Do some letters which are not prepared by you,
but which you signed, bear your initials as this
letter does?

A. Some.

Q. Is there any practice in that regard?

A. Generally routine letters that bear the signature
of or the initials in the left-hand corner of the
person who prepared the letter, but when I have
a letter of a type like this going to the president
of another company, I don't like to show any other
initials on it. It is a matter of courtesy and
business respect.

Q. There is an attachment to Exhibit 22-17, are you
familiar with that?

A. Yes.

Q. How are you familiar with it?

A. Well, I saw a copy of the file recently. One time during the depositions here I looked through it.

Q. Do you have any other familiarity with it?

A. I did participate with Ralph Baer preparing a proposal to TelePrompter or some sort of a letter or plan.

Q. Is this a copy of such proposal?

A. Well, it looks like it, it is along the same lines.

Q. Is that the proposal?

A. The specific proposal we mailed to TelePrompter?

Q. Or a copy of it.

A. Well, subject to verification of the letter, the proposal being mailed, I can't answer the question.

If it turns out that our records show that we mailed this letter, this would be the proposal.

Q. You have no recollection apart from checking your records as to whether - - -

A. I have a recollection of preparing, assisting in the preparation of a proposal to TelePrompter along these lines.

Q. How does this differ, if in any way, from the proposal you prepared?

- A. I didn't do it alone.
- Q. Well, did you participate in the preparation?
- A. That is correct, Ralph Baer and I prepared the proposal.
- Q. Does it differ from that proposal? That is, Exhibit 22-18.
- A. If this turns out to be the one that was mailed, it would not differ one single bit.
- Q. Do you have any recollection as to what the proposal was?
- A. Generally along these lines.
- Q. Does this differ in any respect from what you recall as having been in the proposal that you and Ralph Baer prepared and which was sent to TelePrompter?
- A. I hate to split hairs, Mr. Welsh, you asked me a question whether this differs from a proposal that I recall. In order to know whether something differs from something, I have to have specific details as to both of them so I can compare them and say what the difference is, not recollect eight years later specifically minor details of what the differences are. I have already testified it was

along these lines and I have already told you that if it turns out that this was the one that was mailed, which I promise to verify, then it is the exact same proposal and there is no difference. More I cannot do.

Q. Well, you say it is along these lines, I am asking if you find in here anything that is inconsistent with the proposal you and Mr. Baer prepared?

MR. ANDERSON: Well, I object, you have asked the question twice and he has answered it twice. I permitted it the second time and this is the third time, as far as I can tell, that you have asked the identical question. The question has been asked and answered twice.

MR. WELSH: Well, it hasn't been answered. I take it the witness can't answer it.

(The witness, the ...)

MR. ANDERSON: Well, then, ask him if he can add anything to the prior two answers he gave you. Let's not try to redo it a third time.

Q. Did the proposal that you and Mr. Baer prepared contain any lines other than the lines that appear in Exhibit 22-18?

MR. ANDERSON: Well, I object, you have already established through a line of questioning that he does not have any specific knowledge or recollection by which he can tell you whether this differed from what was mailed to TelePrompter until he finds out what was mailed to TelePrompter which we are trying to find out.

Q. Did the proposal that you and Mr. Baer prepared have any provision for Sanders to participate in a joint venture with TelePrompter?

A. Are you referring to a proposal which we sent out on some working documents in-house?

Q. A proposal which you sent out, not a draft of a proposal?

THE WITNESS: Would you read the question again, please?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: I believe it did or would, as one of the items under consideration.

Q. And did your proposal, that is, the proposal

prepared by you and Mr. Baer, include any provision for a licensing arrangement?

A. I would assume so, yes.

Q. And did it, that is the proposal prepared by you and Mr. Baer that was sent to TelePrompter, include any provision for the manufacture of equipment?

A. I have answered two of your questions, I am having a little problem determining what you mean by a proposal?

Q. I thought that was the term you used to refer to a document prepared by you and Mr. Baer, if that is in error or if that is inaccurate, then how would you refer to the document that you prepared?

A. We were at that time entering into discussions on how and if our two companies could possibly work into an arrangement of some sort or another. We had if you are talking a proposal being some of the proposed things that we might do together, that is the light in which I looked at the term proposal, as distinguished from a proposal or a bid which is a work of art that we use around the company to bid on prospective contracts or to propose to supply a specific piece of hardware.

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Q. Did you not use the term in referring to the subject matter with which you and Mr. Baer worked, did you not use the term "proposal"?

A. I used the term "proposal" in the context that I have just explained, that this was something for discussion between the two companies.

MR. WELSH: Could we have the question again.

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: Equipment generally.

MR. ANDERSON: Well, there is no unanswered question.

MR. WELSH: That is an unanswered question.

MR. ANDERSON: Well, we went on from there and asked some new questions.

MR. WELSH: No, he said he had difficulty answering that question because of not knowing what proposal meant and I was referring to a

proposal as he had referred to it and the question was never answered.

MR. ANDERSON: To make the record clear, why don't you ask a new question?

Q. Did the proposal prepared by you and Mr. Baer contain any reference to the manufacture of equipment?

A. Yes.

Q. And what was that reference?

A. Well, we talked about -- there was a wide range of equipment that we were looking into. It was just a matter of exploring, whereas this letter says, an agenda for discussion, various types of equipment that could be used in the CATV field.

Q. Did Mr. Anderson just point out to you that the word "agenda" is used on Exhibit 22-17?

A. Yes.

Q. And did that proposal prepared by you and Mr. Baer include a provision for fabrication of equipment by Sanders?

A. In the sense as an item for discussion and not as a specific direct quote for equipment yet. Unidentified, the answer is yes.

Q. Was that to be at least a part of the contribution

by Sanders to the joint effort with TelePrompter?

A. We were looking at things of equipment that may have been required that was not even in existence. We were exploring the needs of the industry.

Q. Did this joint venture relate to the TV game development?

MR. ANDERSON: Well, I object, what joint venture? There is no joint venture.

MR. WELSH: I believe he said that the proposal included a reference to joint venture.

MR. ANDERSON: He said the proposal was for an agenda on a meeting to discuss various subjects.

MR. WELSH: That is what the letter said.

MR. ANDERSON: There is absolutely no foundation for the existence of any joint venture that I know of.

MR. WELSH: The witness testified that the proposal referred to a joint venture, Mr. Anderson.

MR. ANDERSON: A possible

joint venture. One of several things on an agenda for an exploratory meeting.

MR. WELSH: Could we have the question again, please?

(Whereupon, the previous question was read back by the reporter.)

MR. ANDERSON: I object to the question also on the ground that there is no foundation for any question about a joint venture.

THE WITNESS: Do you want me to answer the question?

Q. Yes, please.

A. Joint venture was one of the possibilities of one of several approaches which were to be discussed, Mr. Welsh; but I believe that's all.

Q. Did it involve TV games?

A. It could have.

Q. Did you contemplate TV games in preparing the proposal with Mr. Baer?

A. As one of the possibilities, yes. According to the best of my recollection, that is a long time

ago, Mr. Welsh.

Q. And in connection with the proposal and the contribution of Sanders in the fabrication of equipment, did you contemplate the fabrication of TV games?

A. TV games was one possibility for discussion when and if they were ready to be produced when there was one that was commercially available and ready for the market. If this was the arrangement that the parties would reach agreement on.

MR. WELSH: I don't believe the question was answered as to whether in the fabrication of the equipment referred to as the contribution of Sanders that contemplated fabrication of TV games.

MR. ANDERSON: You may not believe so, Mr. Welsh; but I believe so, so we have a disagreement. Why don't you ask a question.

MR. WELSH: I did ask a question and he didn't answer it.

MR. ANDERSON: Well, the last statement was nothing but a statement of your belief and that doesn't get the job done.

MR. WELSH: I would like to have you read that earlier question?

MR. ANDERSON: Well, I will not permit the witness to reanswer a question that he has already answered, so I think you are wasting your time.

MR. WELSH: The answer wasn't responsive.

MR. ANDERSON: Then I suggest you ask another question that may get what you think you want. I think it was responsive and I think it was quite clear.

Q. I will rephrase the question. In the preparation of a proposal by you and Mr. Baer and with respect to participation by Sanders in an effort with TelePrompter including the fabrication of equipment, did you and Mr. Baer contemplate that such equipment which might be fabricated by Sanders would include TV games?

A. Mr. Welsh, there is no - let me put it another way - we had prepared here an agenda for discussion on various methods or various approaches for the parties to discuss of the type of relationship that

they would be entering into. We have no contemplation or a specific contemplation that I can remember of us manufacturing at Sanders Associates the TV games for the reasons I stated this morning. We had discussed a possibility of a joint venture, other possibilities, licensing, etc. The discussions were to determine if there was a common ground, a mutual interest, and a method which we could go into this kind of situation. Until we have an agreement and a meeting of the minds, a completion of plans, contemplation is a little premature.

Q. Your purpose in talking with TelePrompter was to do something commercially with respect to the TV games, was it not?

A. Yes.

Q. So you did have TV games in mind, you and Mr. Baer, when you prepared this proposal for discussion with TelePrompter?

A. That was one of the items that was a possibility in an arrangement.

Q. Assuming you will find that your records show that you actually sent Exhibit 22-17 which makes reference

to a next meeting with TelePrompter, was such a meeting ever held after April 12, 1968?

A. I have no specific recollection of the meetings, but, as I told you this morning, I believe we held four meetings with the TelePrompter people that I recall; or I believe we had four meetings with them, two up here and two down in New York. Whether the other two came after this letter, I am not sure. I don't remember the dates of those meetings, Mr. Welsh.

Q. Did your discussions with TelePrompter ever terminate?

A. Yes, nothing came of the arrangement other than in the supply of those intrusion alarm devices which I believe were supplied.

Q. In your discussions with TelePrompter, did you ever include the subject of prices or costs?

A. Well, we certainly gave them prices, costs of the intrusion devices, I don't recall any prices or costs of other items. I don't even know if we ever reached an agreement on other items, apparently we didn't.

Q. Was there any particular reason for the talks breaking down other than with respect to the

intrusion devices?

MR. ANDERSON: Well, I object, the question asks for speculation and opinion.

THE WITNESS: I don't know of any reason why they broke down, but I do know that nothing ever came of our discussions other than the ordering of those intrusion alarm devices.

Q. Do you have any idea as to why nothing ever came of your discussions other than that?

A. No.

Q. Did Sanders lose interest?

A. I think it may have turned out that a lot of items we were looking at were not the kind of things that we could make. The CATV field didn't have the kind of requirements for new equipment or any need that we thought we could fulfill or had ideas that we could fulfill. You never know why an arrangement doesn't work out. There was no specific thing that led to this. There was nothing that happened that one said go away, we don't want you. Like everything else, it just faded away.

Q. And this just faded away?

A. As far as I know.

Q. Neither party contacted the other party and said there is no reason for going any further?

A. I don't have any recollection of that, Mr. Welsh.

Q. Did Sanders have any discussions with anyone other than TelePrompter in the CATV field?

A. Yes.

Q. Who else?

A. Well, I recall one, we had discussions with some local people here who were operating a CATV station. Also after signing an appropriate proprietary agreement, Mr. Welsh, just for the record.

Q. Did you have anything to do with those discussions?

A. Yes, I participated in one of them.

Q. How many were there?

A. I am not sure, I only know about one that I participated in.

Q. Who was involved in that?

A. Well, there was Mr. Baer and I. I think there was a fellow by the name of Solomon, I am not sure of that, and one of the local lawyers.

Q. Was a demonstration involved?

A. I think so, but I don't have a specific recollection of that.

Q. Did the lawyer represent Mr. Solomon?

A. He may have or he may have been involved with the TV group or both.

Q. Do you recall?

A. No, not specifically.

Q. Was that group the Merrimack Valley CATV?

A. I believe so.

Q. In those discussions, were any proposals made by Sanders as to any arrangement with the Merrimack Valley CATV group?

A. I don't recall any. I thought they were merely exploratory type talks and nothing ever came of them.

Q. Was any proposal made with any provisions similar to those in the proposal to TelePrompter?

A. No, this was a small organization.

Q. Merrimack Valley CATV?

A. A local CATV, whatever the name was, it was the one that was operating in town at the time.

Q. Did you discuss the dealings with TelePrompter or Merrimack Valley CATV or whatever the other group was called with anyone at Sanders other than Mr. Baer?

A. I don't have any recollection of that.

Q. Did you discuss it with Mr. Campman?

A. I don't have any recollection, Mr. Welsh, of that.

Q. In determining what outside people would be contacted in doing something commercially with the TV game project, were you and Mr. Baer the only ones at Sanders involved?

A. That is correct.

Q. Had you been given authority by anyone to make such contacts with outside people?

A. I have authority to make outside contacts all the time.

Q. So you were operating under your general authority?

A. Yes. I don't need authority to contact people. My job is to exploit or rather to maximize the licensing potential in the company on our inventions.

Q. Were you involved in the decisions to reissue the 284 and 285 TV game patents?

A. Yes.

Q. What did you have to do in that regard?

A. Off the record.

(Discussion off the record.)

(Whereupon, the previous question was read back by the reporter.)

MR. ANDERSON: I object to the question as vague and indefinite and would ask that you ask more specific questions, especially of this witness who is a lawyer and was involved in privileged communications in part.

Q. How were you involved?

MR. ANDERSON: You may answer the question.

THE WITNESS: Well, I made the decision to reissue the cases.

Q. Did you discuss the question of whether to reissue the applications with anyone else?

A. Yes. Locations; I have no specific recollection.

Q. With whom did you discuss that question?

A. Mr. Williams, Mr. Anderson, Mr. Seligman, Mr. Baer, Mr. Cesari, and I believe with the other inventors, Mr. Rusch and Mr. Harrison.

Q. Did you discuss the question with Mr. Briody?

A. Yes, I am sorry, I omitted his name.

Q. Was more than one discussion - was there more than

one discussion?

A. Yes.

Q. With whom did you have the first discussion?

A. With Messrs. Anderson, Williams, Briody, Baer and Seligman.

Q. Where did that take place?

A. Chicago.

Q. When did it take place?

A. When, I don't remember the specific date, Mr. Welsh.

Q. Was it prior to the time the reissue applications were filed?

A. It must have been.

Q. Was it a matter of months prior to that date or years or some shorter time?

A. It must have been some weeks before we filed the applications; I have no specific recollection of a time interval.

Q. Where was the discussion held?

MR. ANDERSON: I object, you asked the question and the witness said Chicago.

Q. I am sorry. How many discussions were there prior to the filing of the reissue application, Mr. Etlinger?

MR. ANDERSON: I object, do you mean in which this witness was involved?

MR. WELSH: Yes.

THE WITNESS: I have some problems with the question, Mr. Welsh, we had - I can't recollect whether our subsequent discussions were in person or by telephone, but there were subsequent discussions.

Q. I am seeking information about all of the discussions, whether by telephone or in person.

A. I am not sure whether we had a second personal discussion, I believe we did.

Q. Where was that held?

A. I would say here in Nashua, with the inventors - - -

Q. In your offices?

A. Yes. MR. ANDERSON: That is

Q. Who attended that discussion?

A. I am not quite sure, I believe Mr. Cesari was at it, Mr. Anderson, Mr. Williams, Mr. Seligman, Mr. Briody possibly, and Mr. Baer.

Q. What is Mr. Cesari's full name?

A. Robert.

Q. Is he counsel for Sanders?

A. Yes.

Q. Is he a patent lawyer?

A. Yes.

Q. Located in Boston?

A. Yes.

Q. What other discussions do you recall regarding the reissue applications prior to the filing of those applications?

A. I don't think we had any more personal discussions outside the department or in large meetings. There may have been some telephone discussions. Of course, I think Mr. Seligman and I discussed it. As I mentioned, we discussed it with the inventors.

Q. When you say we discussed it with the inventors - - -

A. Well, Richard and /or I did.

Q. MR. ANDERSON: That is Richard Seligman?

THE WITNESS: Yes.

Q. And that discussion with the other inventors, Rusch and Harrison, was prior to the filing of the applications?

A. Yes.

Q. Was that at the time they signed the declarations

for the applications in which they were involved?

A. Certainly it was discussed at that time.

Q. Did you have any discussions with either of them prior to the time the declarations were signed regarding the reissue applications?

A. I may have; I don't really recall that, Mr. Welsh.

Q. Did you have anything to do with the preparation of the declarations for the reissue applications?

MR. ANDERSON: You can answer that yes or no.

THE WITNESS: Yes.

Q. What did you have to do with the declarations?

A. I certainly read them.

Q. Did you prepare them?

A. Not personally.

Q. Did you in some way?

MR. ANDERSON: Well, I object; I think the declarations were prepared as a part of matters which are subject to the attorney-client privilege. I have permitted you to explore this witness's general involvement; when meetings were held, with whom they have been held, and I think everything that has come out shows that the events

were attorney/client privileged events and therefore I think this is an improper area of inquiry in any greater depth than you have already gone and I will instruct the witness not to answer.

Q. Did someone else prepare the declarations?

MR. ANDERSON: I object, he has already testified that he didn't.

MR. WELSH: He said that he didn't personally.

MR. ANDERSON: Yes, that is what I think I said.

THE WITNESS: No.

Q. Someone else did not prepare the declarations?

A. No, I am sorry, I misunderstood your question. Would you read the question?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: Yes.

Q. Who prepared them?

MR. ANDERSON: You may answer, if you know.

THE WITNESS: Well, I think Mr. Seligman had something to do with it and I think we sought advice of outside counsel.

Q. Did outside counsel prepare them?

MR. ANDERSON: Well, I object to the question as being a question involving an attorney/client communication and privilege and I will instruct the witness not to answer.

Q. Did you provide any facts to the person who prepared or persons who prepared the declarations?

MR. ANDERSON: Again I think I will object and instruct the witness not to answer as a part of an attorney-client exchange and communication and as a privileged communication.

MR. WELSH: That is a yes or no answer.

MR. ANDERSON: Are you indicating that you won't ask the next logical question if the answer comes out one way or the other?

MR. WELSH: I don't think I can do that.

MR. ANDERSON: Then I think

there is no purpose of going beyond where we are now.

MR. WELSH: I think we are entitled to know whether he provided any facts or not.

MR. ANDERSON: That is an attorney-client communication and I instruct the witness not to answer.

Q. Who was outside counsel whose services you procured?

MR. ANDERSON: I object; I don't think he indicated he procured services. Maybe you would like to have the answer read. I don't think he used the term "procured."

Q. From what outside counsel did you seek advice?

MR. ANDERSON: You may answer.

THE WITNESS: Mr. Williams, Mr. Anderson, Mr. Cesari.

Q. Were you furnished such advice?

MR. ANDERSON: You may answer.

THE WITNESS: Yes.

Q. Was the advice furnished in writing or orally?

A. I have a problem answering the question, Mr. Welsh.

Q. What is the basis of your problem?

A. I am not sure.

MR. ANDERSON: Well, Mr. Welsh, you asked whether advice was oral or written, are you referring to the advice with respect to the declaration, is that what you are referring to?

MR. WELSH: Yes.

THE WITNESS: I believe it was oral. I am not sure if it was written or not.

Q. Was some of it written?

A. In the form of written advice, I don't recall any. The answer is ambiguous. The question is a problem, Mr. Welsh.

Q. Did you receive advice from all three outside counsel?

MR. ANDERSON: On the subject of the declaration?

MR. WELSH: Still the same advice that we have been talking about.

THE WITNESS: I would say so, yes.

Q. Did they give you the advice at the same time or at different times?

Q. Was the advice in the same form from all of the different counsel?

MR. ANDERSON: I object, what do you mean by the same form?

MR. WELSH: Well, written or oral.

MR. ANDERSON: I think the witness has already testified that he doesn't recall any written advice as such and believed it was oral. That is what my notes show; therefore, I think the question lacks a foundation or is contrary to the testimony.

MR. WELSH: I don't think he instructed you not to answer.

MR. ANDERSON: No, you can answer it, if you can understand it.

THE WITNESS: Yes. Wait a minute, let me have the question. I have forgotten what it was.

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: Yes.

Q. And was that oral?

A. I believe so.

Q. Did Mr. Williams prepare the declaration and forward them to you for approval?

MR. ANDERSON: I object to the question and instruct the witness not to answer.

MR. WELSH: Mr. Anderson, I believe Mr. Williams has already testified that he prepared the declarations.

MR. ANDERSON: I don't think that is true, I think to save you the trouble of looking - - - Off the record.

(Discussion off the record.)

Q. Did you receive drafts of declarations prepared by Mr. Williams from Mr. Williams?

A. Yes.

Q. Did you receive those after the meeting in Chicago?

A. Yes.

Q. Did you receive them after the second discussion which you believe took place in your offices later here in Nashua?

A. Yes, at least I believe so, Mr. Welsh.

Q. Did you make any revisions in the drafts?

MR. ANDERSON: I object to the question and I instruct the witness not to answer on the ground that it involves an attorney/client communication.

Q. In the discussions, the discussion which was held in Chicago, the first discussion, did the subject matter of prior art come up?

A. Yes.

Q. What prior art did come up in those discussions?

MR. ANDERSON: If you recall.

THE WITNESS: Well, I don't recall too much, one of them we discussed was the Hermann reference.

Q. Is there any other prior art than the Hermann reference discussed at that meeting?

A. I think we may have discussed one more and that was the French reference.

Q. Did you discuss any other prior art during that meeting?

A. Not that I remember.

Q. Was there any discussion during the meeting of

any game observed by Mr. Williams when he was a student in undergraduate work at Stanford University?

A. No.

Q. Are you aware of Mr. Williams having seen a game played at Stanford on a PDP-1 computer using a cathode ray tube?

A. Yes.

MR. ANDERSON: I object, you mean on some personal observation?

MR. WELSH: I just asked if he was aware.

Q. How did you become aware?

A. I think sometime during the depositions at Maynard the subject came up. That was the first I heard of it.

Q. What depositions are you referring to at Maynard's?

A. Russell, I believe it was the one that we held back in the corner way at the end of the building, was that Russell's? I don't remember, it was the last one, I believe.

Q. That is the first time you ever heard of Mr. Williams having seen a game played on a cathode ray tube at Stanford?

A. That is correct.

Q. Did you ever meet Mr. Russell prior to his deposition at Maynard?

A. Yes.

Q. When did you meet Mr. Russell prior to that?

A. About a week or so before the deposition. Let me say this, a week before some depositions, I think Russell's deposition was postponed.

Q. Where did you meet Mr. Russell?

A. A conference room at the Legal Department.

MR. ANDERSON: That is the Legal Department where?

THE WITNESS: At DEC.

Q. Who arranged that meeting?

A. I am not sure, but I think I made it through Mr. Siekman.

Q. Who else was present in the conference room?

A. Mr. Williams; I don't know whether Mr. Siekman was there or one of his men, and there was one other individual there part of the time.

Q. Who was the other person?

A. I don't remember his name.

Q. You say the meeting was held prior to some deposition?

A. Yes.

Q. Were those or was that deposition at DEC?

A. Yes.

Q. The first deposition at DEC? *in Chicago*

A. I don't remember if it was the first one or not.

Q. How did you happen to arrange the meeting?

A. I am not sure, but I understood that you had noticed them or something to that effect. My recollection is vague, I thought you had noticed them for *depositions or something.*

Q. *by the reporter.)* What was the purpose of arranging the meeting?

A. Well, my primary purpose in arranging the meeting was to have Mr. Williams meet with him.

Q. Meet with him and do something?

A. Have a discussion, and I don't *remember.*

Q. Were you present at all times when Mr. Williams and Mr. Russell were together?

A. I don't think so, I think I had wandered in and out. I had some discussions with Mr. Siekman.

Q. Were you present during the first part of the discussion between Mr. Williams and Mr. Russell?

A. Certainly, at least the first part.

Q. Did you hear Mr. Williams tell Mr. Russell that

Mr. Williams had seen Space War as a student at Stanford?

A. I don't recall him saying that.

Q. Subsequent to that first meeting in Chicago regarding the reissue applications, did Mr. Williams ever tell you about the game he had seen at Stanford?

A. Would you read that question again, please?

clearly asked and I don't think it was repeated.
(Whereupon, the previous question was read back verbatim from the deposition of the case from various sources by the reporter.)

THE WITNESS: Yes.

Q. When did he first tell you about that?

A. After that meeting at, I think it was, the Russell deposition and I don't remember any specific discussion on it other than at that meeting at DEC.

Q. What did Mr. Williams tell you after the meeting or after the deposition?

MR. ANDERSON: On the subject of your last two questions?

MR. WELSH: Yes, with respect to the game that Mr. Williams had seen at

Stanford.

THE WITNESS: He had seen the Space War game at Stanford.

Q. Did he tell you any details of the game he had seen? any discussion in 1961.

A. I think by that time, Mr. Welsh, I have been present at depositions where many details of the game were already exposed and I don't think it was necessary for him to tell me any details. I heard many details of the game from various sources from the depositions, involved with Mr. Williams.

Q. This question was with respect to Mr. Williams telling you any details of the game that he saw as a student at Stanford. Did he tell you any details of that game? and I had read that.

A. At any time? about the specific game that he saw.

Q. Yes.

A. I have a problem remembering that in answering that, Mr. Welsh. I don't recall him going into a blow by blow description of that game.

Q. What did he tell you?

MR. ANDERSON: Well, Mr. Welsh, I object to this line of questioning as irrelevant

to any issue in this lawsuit as to any communication at the time that we are talking about which was the time of the Russell deposition which I think was this year, 1976. Can you state what the relevance is of any discussion in 1976?

MR. WELSH: It is relevant as to what he recalls as to what the game consisted of.

THE WITNESS: I don't remember any detailed discussions or any discussions of what the game involved with Mr. Williams. As I told you before, I knew - it came out at that point that he had witnessed a game as a student. I had sat through many depositions where many Space Wars were described and I had no detailed discussions about the specific game that he saw out there.

Q. When he had the discussion with you, did Mr. Williams refer to the game he had seen at Stanford as Space War or a version of it?

A. I am not sure. He might have, I really don't know.

Q. Are you aware of whether Mr. Williams ever deliberated

as to whether to bring the fact of his knowledge of the game at Stanford to the attention of the Patent Office in connection with the reissue applications?

A. No.

Q. Mr. Williams never told you that he deliberated as to whether to call the fact of his knowledge of the Stanford game to the attention of the Patent Office?

THE WITNESS: Would you read that question back?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: I don't recall any discussion with him on that.

Q. Have you ever deliberated as to whether to call Space War or any version of it to the attention of the Patent Office in connection with the reissue applications?

A. Yes.

Q. When did you first have such a deliberation?

A. My first knowledge of the Space War game and knowing

what it was occurred when I received a copy of Stewart Brand's book.

Q. That is a book which has been marked as Exhibit 23 in the Samson deposition? Could I have the question and answer, please?

(Whereupon, the previous question and answer were read back by the reporter.)

Q. Is that the same book as the one marked as Samson Deposition Exhibit 23?

A. The same copy?

Q. No, a copy of the same book.

A. Yes.

Q. The book you referred to was "II Cybernetic Frontiers," by Stewart Brand, is that correct?

A. Yes.

Q. Where did you receive that, a copy of that book?

A. I don't remember the specific date, but I think there is a letter in the file transmitting a copy of it to me from Mr. Briody. I think it was sometime last summer. Whatever that letter says, Mr. Welsh,

is when I received it.

MR. WELSH: Do you know the date of that letter, Mr. Williams? Maybe I have it here. There were identified in a response of Magnavox and Sanders to Interrogatory No. 11 which identifies documents which mention or referred to a game called Space War, and No. 10 of those documents was identified as a letter of July 21, 1975, from T. A. Briody. The subject was "II Cybernetic Frontiers" by Stewart Brand, and it was stated, forward copy of book and comments thereon, and that you have custody of the original; is that the letter that you referred to?

A. Yes.

Q. Did you receive that letter with the book shortly after the date of July 21, 1975?

A. Yes.

Q. When you received the copy of the book, did you read the portions of it relating to a game called Space War?

A. Yes.

Q. What, if anything, did you do after reading the portions of the book referring to Space War?

MR. ANDERSON: I object, the question is vague and ambiguous. He continued to eat three meals a day, I presume.

Q. Did you discuss the book with anyone?

A. Yes.

Q. And with whom did you discuss it?

A. Mr. Seligman.

Q. Did he read the portions of the book relating to Space War?

A. I assume so, Mr. Welsh.

Q. Why do you assume so?

A. I gave him the book, I assume he read it.

Q. Did you instruct him to read it?

A. Yes, I did. The article, Mr. Welsh, we decided

Q. Did you discuss the book with him after you gave it to him to read?

A. Yes.

Q. Did you discuss the relevancy of any game described in that book to the TV game patents in suit?

A. Yes.

Q. What was your discussion in that regard?

A. We looked at the article in the light of the reissue patents and after discussion, we decided, one, that

it was totally irrelevant; two, it was not a suitable reference; three, it did not - all the claims were clearly distinguishable by the claims in the reissue applications and also it was not as good or better than any prior art already cited which the patent claims have already been allowed over.

Q. Did you and Mr. Seligman actually attempt to apply the claims of the patents to any game that was described in that book, "II Cybernetic Frontiers"?

A. I believe so, yes.

Q. What claims did you attempt to apply?

A. All of them.

Q. All the claims of both reissue patents?

A. We looked at the article, Mr. Welsh, we decided it didn't have any of the features called for. It did not have the principles involved in the invention and we checked all the claims against the article and we came to the conclusion that I mentioned above.

MR. WELSH: Could I have that answer back, please?

(Whereupon, the previous answer was read back

by the reporter.)

Q. When you say all of the claims, you mean all of the claims of the reissue applications?

A. Yes.

Q. What features of the invention of the reissue patents did you feel were not present in the game disclosed in the article or the book?

A. Well, for one, it was not raster scan. It did not have the hit and the hitting spot. It didn't have a lot of the elements in the claims, I don't remember them all. It was a large computer, that is about all the things that I can recall at the moment.

Q. Now, you referred, I believe both to features and principles which the games described in the article did not have, you have described the features, what are the principles involved in the invention that are not present in the game described in "II Cybernetic Frontiers"?

MR. ANDERSON: I object, which invention?

MR. WELSH: He said the invention of the reissue patents.

MR. ANDERSON: The inventions.

MR. WELSH: I think he said invention.

THE WITNESS: They follow.

It is not a raster scan display with all the advantages you obtain by a raster scan. The other elements I mentioned are contained in the claims and whatnot operated by different means. This is a programmed large-scale computer.

MR. ANDERSON: When you say this - - - considered more pertinent than space war?

A. Not familiar with it. THE WITNESS: The subject of the article. It is very expensive.

Q. Does the raster scan which you say is not present, the subject matter of the "II Cybernetic Frontiers" article, have advantages?

A. You don't need large quantities of storage which was brought out at the depositions, and its intended effects on the large quantity of storage and the timing. The ability to move large objects around, etc. Not to mention again the cost. This was a machine, I think, in the hundreds of thousands of dollars, not exactly something that every consumer could buy.

Q. Did you consider at that time that the art cited by the Patent Office was more pertinent to the inventions of the reissue patents than Space War?

A. I considered it certainly as good as, if not better. Let me answer your question yes.

Q. What art cited by the Patent Office did you consider was better?

A. The Hermann reference.

Q. Any other prior art cited by the Patent Office that you considered more pertinent than Space War?

A. I am not familiar with all the art that was cited. I haven't seen it for a long time, but I think the Hermann one is the primary reference. The French patent, which was held out as prior art.

Q. Do you consider that to be better, too?

A. I consider that to be better than Space War, yes.

Q. Is that because the French patent showed a raster scan?

MR. ANDERSON: I object, there is no foundation for the question. The witness can answer it, if he recalls or if he knows.

THE WITNESS: Well, I have a problem, Mr. Walsh. I have all these applications

and the question all jumbled together. We have several patents. I think I would say I think the primary reference which I considered that was good or better was the Hermann reference. I don't remember the other ones at this point. As I say, I haven't seen them for a long time.

Q. Did you and Mr. Seligman at any time attempt to read the claims of the reissue applications on the subject matter of this "II Cybernetics" article? Compare that subject matter of the article with the prior art which had been cited in the Patent Office in the reissue applications?

A. I am not sure we discussed it, so that Mr. Seligman

Q. After you first found out or became aware of Space War, when did you deliberate as to whether to call it to the attention of the Patent Office?

A. As I have told you before, the first knowledge I had of Space War, of what it was, was when I got this cybernetics book and the deliberation occurred the same day that I got the book or the day after.

Q. Was that the only time that you had such a deliberation?

A. I don't remember if I had any other deliberations

in this.

Q. Subsequent to that one time, you did not again consider it a question of whether you should call Space War to the attention of the Patent Office?

A. No.

Q. Did you make any attempt to investigate Space War beyond what was described in the article of "II: Cybernetic Frontiers"?

MR. ANDERSON: I object, the witness has already testified that he met with Mr. Russell sometime after that.

MR. WELSH: The purpose for that, I believe he stated, was so that Mr. Williams could talk with Mr. Russell.

THE WITNESS: To answer, your question another way, I didn't have to investigate Space War, Mr. Welsh; you did, a very thorough job at the depositions.

MR. WELSH: Could I have the last question and answer, please?

(Whereupon, the previous question and answer were

read back by the

reporter.)

Q. Did you make any effort prior to the depositions which I took in an effort to find out anything more about Space War?

A. Yes.

Q. What did you do?

A. At sometime prior to one of the depositions, we made a search for any documents or anything we had in the company on Space War, I don't remember what that was, but I think we produced a tape. I had seen a Space War game that was set up here in the company on a PDP-11 a week or two before Sauter left the company. And I don't know the time frame between these depositions and the one at MIT, where they all fit in.

Q. When you say these depositions, what are you referring to?

A. Well, the deposition you had in one of your questions one or two back. I think the question was prior to some deposition, whether I had done anything prior. Now, I don't remember where the MIT deposition fit in. There was a great deal of questioning concerning

Space War at MIT, as I recall.

Q. Did both of these matters of investigation; that is, your search for documents here at the company or your seeing Space War here on a PDP-11 occur prior to the MIT depositions?

A. I don't know.

Q. How soon after you became aware of the "II Cybernetic Frontiers" article did you make the search for documents here?

A. I don't really know how soon, I don't remember how soon it was.

Q. Was that search made in response to a former request by the parties on the other side of the lawsuit from Magnavox and Sanders?

A. It may have been, yes.

Q. Who made the search?

A. I asked Mr. Seligman to make the search.

Q. I am not sure whether you answered as to how soon after you became aware of the "II Cybernetic Frontiers" article that the search was made, would you answer that?

A. I don't know; I don't remember.

Q. But it was made by Mr. Seligman?

- A. At one time I believe in response to either some document or a subpoena or whatever, an interrogatory, I asked Mr. Seligman to make the search.
- Q. How did you find out about Space War being set up on a PDP-11 here at Sanders?
- A. Somebody came up to my office and said there is an interesting game downstairs and I went down to see it.
- Q. Who told you about the game?
- A. One of my staff.
- Q. Who was that?
- A. Joe Funk.
- Q. Did he say how he found out about it?
- A. I think he just walked into the computer room or the facility downstairs and saw it.
- Q. What facility here did that take place in?
- A. It was one of the floors in this building.
- Q. Was it military data systems?
- A. Yes.
- Q. Did anyone accompany you when you saw Space War set up on a PDP-11 here?
- A. Well, I think Joe Funk went down with me; I don't remember anybody else. Maybe Richard, I am not sure.

Q. That is Mr. Seligman?

A. Yes.

Q. Did you just observe a demonstration of the game or did you actually participate as a player?

MR. ANDERSON: I will object to the question and the line of questioning on the grounds that it is irrelevant. I think the time hasn't been fixed precisely, but it was a very recent event, apparently.

MR. WELSH: You may answer the question.

MR. ANDERSON: You may answer the question.

THE WITNESS: What was the question again?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: I observed the game being played, Mr. Welsh.

Q. For how long a period of time did you observe the game?

A. Just a couple of minutes.

Q. Other than the search for documents which Mr. Seligman conducted under your instructions and seeing the Space War setup on the PDP-11 here at Sanders, did you do anything else prior to the issuance of the reissue patents to find out any more about any version of Space War?

A. Before I answer the question, I would like to say, I don't know what the time frame of these depositions were, I remember I had a great deal of information from the depositions on Space War, and I don't remember when the MIT depositions took place.

Q. Those are the depositions that you are referring to?

A. Well, there were a whole bunch of depositions. You took many depositions on Space War in great detail and I don't know what the time frame was.

Q. Are you referring to depositions which you attended?

A. Yes.

Q. Were you informed about other depositions regarding Space War that you did not attend?

A. I didn't follow those.

Q. Prior to those depositions at MIT which, I believe,

were the first ones you attended, and subsequent ~~are~~
to the time when you saw "II Cybernetic Frontiers"
for the first time, did you do anything else in an
attempt to find out any more about Space War;
that is, other than the search you had made for
documents by Mr. Seligman and your observing ~~played~~
Space War on the PDP-11 here?

A. I don't think so, Mr. Welsh. I don't remember.

Q. Did you discuss Space War with Mr. Briody?

A. Well, I discussed the Brand article with him.

Q. After you received it and had read it?

A. Yes.

Q. What was the substance of that discussion?

A. The substance of that discussion was the same as
the answer to the question I gave you a few minutes
ago, we didn't think it was relevant, pertinent,
or a reference, nor did it have any application
to the reissue applications.

Q. Did you discuss with Mr. Briody the question of
whether Space War should be investigated at the
time you discussed this article with him?

MR. ANDERSON: I have to
object to this line of questioning and instruct

the witness not to answer on the ground that you are exploring into matters of attorney-client privilege.

Frontiers" article. MR. WELSH: Who are you saying is the attorney and who is the client?

be called to the att. MR. ANDERSON: Well, there are several attorney-client relationships involved.

In this case, probably Mr. Briody and Mr. Etlinger are both in the role of client and we stand in the position of attorney and this relates to matters involving all of us. conjecture and, therefore, I

instruct the witness. MR. WELSH: It doesn't involve any communication between you and either Mr. Etlinger or Sanders or Magnavox or Mr. Briody.

MR. ANDERSON: No, but it involves communications between two attorneys of parties having a common interest both of whom we represent and it is admittedly difficult to draw the line, but the line must be drawn and I think this is a good place to draw it. I have permitted you to inquire about this witness's deliberations and reactions and at that point that is as close as I am able to the proper place to draw the line as I am able to as a human being. MR. WELSH: Well, Mr. Anderson,

Q. Did you and Mr. Briody in your discussion after you had - just after you had read the "II Cybernetic Frontiers" article on Space War, deliberate with respect to the question of whether Space War should be called to the attention of the Patent Office in the reissue applications?

MR. ANDERSON: I object to any interrogation of this witness about Mr. Briody deliberations. It would be pure speculation and hearsay and totally conjecture and, therefore, I instruct the witness not to answer with respect to Mr. Briody's deliberations or any conversations that Mr. Etlinger had with Mr. Briody. Yes, but they are not waiving the MR. WELSH: You are instructing him not to answer on what ground? ver or agreement to waive or agree, or MR. ANDERSON: On several grounds. On the ground of attorney-client privilege, if it is a communication. On the other ground that if it is Mr. Briody's deliberations, it would have to be either a communication or total conjecture; and, on either ground, it is objectionable and I instruct the witness not to answer.

MR. WELSH: Well, Mr. Anderson,

attorneys for their respective clients who have common interests and to some extent, they are both a client of my firm and our firm that represents both of them in this litigation and they are entitled to exercise the privilege in either or both contexts.

Q. Were there any other parties to the discussion, any other persons present in your discussions with Mr. Briody regarding the "II Cybernetic Frontiers" article?

A. No, it was a telephone conversation.

Q. Was there any discussion between the two of you at that time as to whether to call any version of "Space War" to the attention of the Patent Office?

MR. ANDERSON: I object to the question and instruct the witness not to answer.

MR. WELSH: I see it is past five o'clock so why don't we break for the day.

(Whereupon, the deposition in the above-entitled matter was adjourned at 5:05 p.m.)

IN WITNESS WHEREOF, I have